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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

HENDRICK LUCAS,

Plaintiff and Appellant,

v.

JP MORGAN CHASE BANK, N.A.,

Defendant and Respondent.

E061178

(Super.Ct.No. MCC1301701)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge, and Maxine N. Morisaki, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Affirmed.

Hendrick Lucas, in pro. per., for Plaintiff and Appellant.

AlvaradoSmith, S. Christopher Yoo, Jacob M. Clark; Parker Ibrahim & Berg, John M. Sorich and Chanel L. Oldham for Defendant and Respondent.

Plaintiff and appellant, Hendrick Lucas, sued defendant and respondent, JP Morgan Chase Bank, N.A. (JPMC), alleging causes of action based on the alleged

unlawful foreclosure and trustee's sale of his property, located at 40483 Via Gamay Way in Temecula, in November 2010. The trial court sustained JPMC's general demurrer, without leave to amend, and dismissed the complaint with prejudice on the ground it was barred by res judicata.

In a prior action, filed in 2011 and dismissed with prejudice in February 2012 (the prior action), Lucas asserted causes of action against JPMC based on the same primary right that underlies his present complaint: the alleged wrongful foreclosure and trustee's sale of Lucas's Via Gamay Way property in November 2010.

Lucas appeals, claiming the present action is not barred by res judicata because it alleges new and different theories of recovery and facts not alleged in the prior action. We affirm. The present action is barred by res judicata. Lucas's prior action against JPMC resulted in a final judgment on its merits and was based on the same primary right underlying the present complaint: alleged wrongful foreclosure and trustee's sale of the Via Gamay Way property in November 2010. Further, the present complaint does not allege any facts that were not alleged or could not have been alleged in the prior action.¹

¹ In an appeal by Lucas in an unrelated case, No. E061065, we affirm a judgment in Riverside County Superior Court case No. RIC1301701, dismissing Lucas's complaint against Wells Fargo Bank, N.A. on the ground it was barred by res judicata. Lucas twice sued JPMC and Wells Fargo Bank, N.A., in separate, successive actions, for their alleged wrongful foreclosure of deeds of trust on two separate Temecula properties Lucas owned.

I. FACTS AND PROCEDURAL BACKGROUND

A. *Factual Background*

In 2005, Lucas obtained a loan from Washington Mutual Bank (WaMu) in the principal amount of \$550,000, secured by a deed of trust (the trust deed) against the real property located at 40483 Via Gamay Way in Temecula. The trust deed was recorded on August 9, 2005, and identified WaMu as the lender and beneficiary, California Reconveyance Company, as the trustee, and Lucas as the borrower. On September 25, 2008, JPMC acquired certain assets of WaMu from the Federal Deposit Insurance Corporation, which was acting as receiver for WaMu, including WaMu's interest in plaintiff's loan.

On November 10, 2009, an assignment of the deed of trust was recorded, stating that the beneficial interest in the deed of trust had been granted, assigned, and transferred to Bank of America (BofA). Also on November 10, 2009, a notice of default and election to sell under the deed of trust was recorded, stating that the loan secured by the deed of trust was \$12,282.86 in arrears as of November 5, 2009.

Nearly one year later, on October 22, 2010, a notice of trustee's sale was recorded, stating that the unpaid balance of the loan, together with other charges, was \$593,342.69. The property was sold on November 16, 2010, to L & L Enterprises. On November 24, 2010, a trustee's deed was recorded in favor of L & L Enterprises, stating that the unpaid debt secured by the deed of trust, together with other costs, was \$617,342.38.

B. The Prior Action (RIC1102366)

On February 15, 2011, Lucas filed the prior action, a lawsuit titled *Lucas v. L & L Enterprises* in the Riverside County Superior Court, case No. RIC1102366. Lucas filed original, first, and second amended complaints in the prior action, naming JPMC, WaMu, BofA, California Reconveyance Company, and L & L Enterprises as defendants, among others. JPMC's general demurrers to the original and first amended complaints in the prior action were sustained with leave to amend; its general demurrer to the second amended complaint (the SAC) was sustained without leave to amend; and the prior action was dismissed with prejudice.

The original complaint alleged nine causes of action against JPMC, titled: (1) wrongful foreclosure, (2) cancellation of trustee's deed/set aside trustee's sale, (3) fraud, (4) wrongful foreclosure, (5) unjust enrichment/accounting demand, (6) quiet title, (7) violation of Fair Debt Collection Practices Act (Civ. Code, § 1788 et seq.), (8) motion for temporary and permanent injunction, and (9) compensatory damages. The first amended complaint alleged six cause of action against JPMC, namely, the same causes of action alleged as the first, second, third, fifth, sixth, and seventh causes of action of the original complaint. Finally, the SAC alleged only two causes of actions against JPMC for wrongful foreclosure and unjust enrichment.

All three complaints were based on numerous alleged irregularities and legal violations by JPMC and others in connection with the foreclosure sale proceedings, the notice of default and other foreclosure documents, and the trustee's sale. In the SAC, as

in the original and first amended complaints, Lucas sought injunctive and declaratory relief, compensatory and punitive damages, and to quiet title to the Temecula property in his name.

In at least one of the complaints in the prior action, Lucas alleged:

(1) The trustee's sale was void because JPMC twice unlawfully rejected plaintiff's loan modification application due to "computer code errors" or other mistakes by JPMC's loan department, even though Lucas made "trial payments" and completed all of the requirements of the HAMP federal loan modification program;

(2) JPMC failed to comply with Civil Code section 2923.5 (requiring the mortgage servicer, beneficiary, or other authorized agent to contact borrower, before recording a notice of default, in order "to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure"); and

(3) JPMC and California Reconveyance Company had no standing or right to foreclose under the deed of trust; the assignment of the deed of trust to BofA and other foreclosure-related documents were invalid "forgeries" and had been signed by "robo-signers"; and BofA could not be the beneficiary under the deed of trust because the loan had been securitized.

C. The Present Lawsuit (MCC1301701)

Lucas filed his complaint in the present action on November 15, 2013, more than 19 months after the judgment of dismissal was entered in the prior action on February 14, 2012. Lucas did not appeal from the judgment in the prior action.

The present complaint alleges six causes of action titled: (1) violations of Business and Professions Code section 17200 et seq., (2) breach of the implied covenant of good faith and fair dealing, (3) breach of contract, (4) fraudulent misrepresentation, (5) cancellation of instruments, and (6) violations of the Homeowners Bill of Rights Act. Each cause of action and the relief sought is based on the alleged unlawful foreclosure sale of Lucas's Temecula property in November 2010.

D. JPMC's Demurrer to the Present Complaint and the Trial Court's Ruling

JPMC generally demurred to the present complaint, and each of its alleged causes of action, on the ground the complaint was barred by res judicata. JPMC argued the present complaint was based on the same primary right that Lucas asserted against JPMC in the prior action, namely, the alleged wrongful foreclosure sale of his Via Gamay Way property. Following a March 18, 2014, hearing, the court sustained the general demurrer without leave to amend, and later entered a judgment dismissing the complaint, with prejudice.

Pursuant to JPMC's request, the trial court took judicial notice of the complaints filed in the prior action, the orders sustaining JPMC's demurrers to the complaints in the prior action, the judgment of dismissal in the prior action, and recorded documents related to the foreclosure sale, including the trust deed, the assignment to BofA, the notice of default, the notice of sale, and the trustee's deed.

II. ANALYSIS

A. *Standard of Review*

On appeal from a judgment dismissing a complaint following the sustaining of a general demurrer, we review the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory. (*Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal.App.4th 238, 243-244.)

In determining whether the complaint states a cause of action, we assume the truth of all material facts properly pleaded, but not factual contentions or legal conclusions; we give the complaint a reasonable interpretation by reading it as a whole and its parts in their context; and we consider matters which may or must be judicially noticed, but we disregard any allegations that are contrary to law or judicially noticeable facts. (*C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1102.)

The judgment of dismissal will be affirmed if it is proper on any ground stated in the demurrer. (*Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713, 721.) If, however, the plaintiff shows a reasonable possibility that the complaint can be amended to state a cause of action, we reverse; if not, we affirm. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

B. *Res Judicata/Overview*

““““The doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction, and should not be

permitted to litigate it again to the harassment and vexation of his opponent. Public policy and the interest of litigants alike require that there be an end to litigation.”

[Citation.] ‘[R]es judicata benefits both the parties and the courts because it “seeks to curtail multiple litigation causing vexation and expense to the *parties* and wasted effort and expense in *judicial administration*.”’ [Citation.]” (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 575.)

“Under the doctrine of res judicata, a valid, final judgment on the merits is a bar to a subsequent action by parties or their privies on the same cause of action. [Citation.] In California, a ‘cause of action’ is defined by the ‘primary right’ theory. ‘The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action.’ [Citation.] In particular, the primary right theory provides that a cause of action consists of (1) a primary right possessed by the plaintiff, (2) a corresponding duty devolving upon the defendant, and (3) a delict or wrong done by the defendant which consists of a breach of the primary right. [Citation.]

““If the matter was within the scope of the action, related to the subject matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is res judicata on matters which were raised or could have been raised, on matters litigated or litigable. [Citations.]” [Citation.]” (*Amin v. Khazindar* (2003) 112 Cal.App.4th 582, 589-590.)

“The fact that different forms of relief are sought in the two lawsuits is irrelevant, for if the rule were otherwise, ‘litigation finally would end only when a party ran out of counsel whose knowledge and imagination could conceive of different theories of relief based upon the same factual background.’ [Citation.] . . . ‘. . . [U]nder what circumstances is a matter to be deemed decided by the prior judgment? Obviously, if it is actually raised by proper pleadings and treated as an issue in the cause, it is conclusively determined by the first judgment. But the rule goes further. If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it could have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. . . . “ . . . [A]n issue may not be thus split into pieces. If it has been determined in a former action, it is binding notwithstanding the parties litigant may have omitted to urge for or against it matters which, if urged, would have produced an opposite result’”” (*Interinsurance Exchange of the Auto. Club v. Superior Court* (1989) 209 Cal.App.3d 177, 181-182, italics omitted.)

““In California the phrase “cause of action” is often used indiscriminately . . . to mean *counts* which state [according to different legal theories] the same cause of action’ [Citation.] But for purposes of applying the doctrine of res judicata, the phrase ‘cause of action’ has a more precise meaning: The cause of action is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced. [Citation.] . . . ‘[T]he “cause of

action” is based upon the harm suffered, as opposed to the particular theory asserted by the litigant. [Citation.] Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief.

“Hence a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though [the plaintiff] presents a different *legal ground* for relief.” [Citations.]’ Thus, under the primary rights theory, the determinative factor is the harm suffered. When two actions involving the same parties seek compensation for the same harm, they generally involve the same primary right.” (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 798.)

“As far as its content is concerned, the primary right is simply the plaintiff’s right to be free from the particular injury suffered. [Citation.] It must therefore be distinguished from the *legal theory* on which liability for that injury is premised: ‘Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief.’ [Citation.] The primary right must also be distinguished from the *remedy* sought: ‘The violation of one primary right constitutes a single cause of action, though it may entitle the injured party to many forms of relief, and the relief is not to be confounded with the cause of action, one not being determinative of the other.’” (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681-682.)

C. *Res Judicata Bars the Present Action and Complaint*

“Res judicata bars a cause of action that was or could have been litigated in a prior proceeding if ‘(1) the present action is on the same cause of action as the prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the parties in the present action or parties in privity with them were parties to the prior proceeding. [Citation.]’ [Citation.]” (*Federal Home Loan Bank of San Francisco v. Countrywide Financial Corp.* (2013) 214 Cal.App.4th 1520, 1527.)

Here, all three elements of claim preclusion are present. The parties to the present action, Lucas and JPMC, were parties to the prior action, and the present complaint is based on the same “cause of action” or primary right as the complaints in the prior action: the alleged wrongful, fraudulent, and otherwise unlawful foreclosure under the deeds of trust and the trustee’s sale of the Via Gamay Way property in November 2010.

The prior action also resulted in a final judgment on the merits, simply because it was dismissed *with prejudice*. “[F]or purposes of applying the doctrine of res judicata . . . a dismissal with prejudice is the equivalent of a final judgment on the merits, barring the entire cause of action. [Citations.] . . . ‘The statutory term “with prejudice” clearly means the plaintiff’s right of action is terminated and may not be revived. . . . [A] dismissal with prejudice . . . bars any future action on the same subject matter.’” (*Boeken v. Phillip Morris USA, Inc.*, *supra*, 48 Cal.4th at p. 793.) Lucas did not appeal the February 14, 2012, judgment of dismissal in the prior action, and the time for appeal had

expired when he filed the present action in November 2013. (Cal. Rules of Court, rule 8.104.)

Lucas argues his present complaint is not barred by res judicata because it is not based on the same cause or causes of action as his SAC in the prior action, in which he alleged causes of action against JPMC for wrongful foreclosure and unjust enrichment. He argues that, in the prior action, he “failed to properly frame the complaint [the SAC] with proper causes of action.” In his present complaint, however, he claims he is alleging new and proper theories of recovery against JPMC based on “facts, activities, and actions [that] were still unfolding” when the prior action was dismissed with prejudice. Thus, he claims, he has cured the defects in the SAC by alleging new theories of recovery in the present complaint, based on facts he did not fully discover before the prior action was dismissed.

Lucas’s argument is unavailing for two reasons. First, and as indicated, a primary right must be distinguished from both the *legal theory* upon which liability for the injury to the primary right is based *and* the *remedies* available for the injury. (*Crowley v. Katleman, supra*, 8 Cal.4th at pp. 681-682.) As explained in *Crowley*, even where there are multiple legal theories upon which recovery might be predicated and the injured party may be entitled to many forms of relief, “‘one injury gives rise to only one claim for relief.’ [Citation.]” (*Ibid.*) Accordingly, “numerous cases hold that when there is only one primary right an adverse judgment in the first suit is a bar even though the second suit is based on a different theory [citation] or seeks a different remedy [citation].” (*Id.* at

p. 682, fn. omitted; *Lincoln Property Co., N.C., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 912.) Though the present complaint alleges different theories of recovery in the form of different “causes of action” against JPMC, the present complaint is based on the same primary right as the SAC in the prior action.

Second, the present complaint does not allege any new or additional facts that were either not alleged in the prior action or that could not have been alleged in the prior action. Simply put, “[r]es judicata bars the litigation not only of issues that were actually litigated in the prior proceeding, but also issues that could have been litigated in that proceeding.” (*Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82.) Ostensibly, all of the new and additional facts alleged in the present complaint could, with reasonable diligence, have been discovered earlier and alleged in the SAC in the prior action. By his present complaint, Lucas is attempting to recycle the same wrongful foreclosure claim he asserted against JPMC in the prior action, but the law does not allow him to do so. The judgment of dismissal in the prior action bars the present action against JPMC.

III. DISPOSITION

The judgment of dismissal is affirmed. JPMC shall recover its costs on appeal.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

MILLER

J.